

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9
EFFLUENT LIMITATIONS FOR THE) (Rulemaking - Water)
CHICAGO AREA WATERWAY SYSTEM)
AND THE LOWER DES PLAINES RIVER:) Subdocket D
PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code Parts 301, 302, 303 and 304)

NOTICE OF FILING

To: ALL COUNSEL OF RECORD
(Service List Attached)

PLEASE TAKE NOTICE that on the 12TH day of December, 2014, I electronically filed **METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S RESPONSE TO COMMENTS ON FIRST NOTICE OPINION AND ORDER** with the Office of the Clerk of the Illinois Pollution Control Board.

Dated: December 12, 2014

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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PROOF OF SERVICE

The undersigned attorney certifies, under penalties of perjury pursuant to 735 ILCS 5/1-109, that he caused a copy of the foregoing **METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S RESPONSE TO COMMENTS ON FIRST NOTICE OPINION AND ORDER**, to be served via First Class Mail, postage paid, from One North Wacker Drive, Chicago, Illinois, on the 12th Day of December, 2014, upon those listed on the attached Service List.

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**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S
RESPONSE TO COMMENTS ON FIRST NOTICE OPINION AND ORDER**

The Metropolitan Water Reclamation District of Greater Chicago (“MWRD” or the “District”) has the following responses to comments filed by other parties concerning the First Notice Opinion and Order in this proceeding:

1. BUBBLY CREEK DISSOLVED OXYGEN STANDARD: Illinois EPA (“IEPA”), in its comments, addresses a concern raised by the Board about the dissolved oxygen (DO) standards for Bubbly Creek. The Board had noted that if it retains the current DO standards for Bubbly Creek, then the “anytime” standard for that waterbody (4.0 mg/l) will be more stringent than the “anytime” standard for all other CAWS waters (3.5 mg/l). In response, IEPA suggests that the Board simply adopt the standards proposed by IEPA for Bubbly Creek in 2007 or, in the alternative, retain current standards until Bubbly Creek issues can be resolved in Subdocket E. IEPA Comments at 4. The District believes that both of IEPA’s suggestions are wrong and should not be adopted by the Board. As for simply adopting IEPA’s 2007 proposal, that would make irrelevant the new Subdocket E that the Board has created specifically to consider what standards are appropriate for Bubbly Creek. As to the alternative of retaining all current DO standards, that would ignore the contradiction inherent in making Bubbly Creek subject to a more

stringent DO standard than any other CAWS water. It has long been clear that the DO issues in Bubbly Creek are actually more complex, and the attainability issues more difficult, than for any other reach in the system. That is why a special subdocket is needed, and that is where these issues will be addressed. In the meantime, the “anytime” standard for Bubbly Creek should be no more stringent than the “anytime” standard applied to the other CAWS reaches. The 3.5 mg/l standard applicable to those waters should also be applied to Bubbly Creek.

2. TEMPERATURE ISSUES FOR MWRD: The Environmental Groups express a concern that the application of General Use standards to the North Shore Channel and Little Calumet River could result in a requirement that the District cool the effluent from its O'Brien and Calumet plants, which the Environmental Groups believe would be inappropriate. Environmental Group Comments at 3. The District agrees that a requirement to cool its effluents would be inappropriate. We believe, for the reasons set forth in the comments of Midwest Generation and the other industrial parties, that application of the General Use standards to the CAWS is wrong as a scientific matter and as a policy matter. If, despite those concerns, the General Use standards are applied, then the Board should provide appropriate relief to ensure that the District is not required to cool its effluents.

3. AMMONIA STANDARDS: The Environmental Groups state that instead of adopting the ammonia criteria in the Agency's proposal, the Board should adopt the new ammonia criteria recommendations issued by U.S. EPA in April 2013. Environmental Group

Comments at 6-7. The District believes that such action by the Board would be wholly improper. The new U.S. EPA recommendations have not been the subject of any hearings in this rulemaking. Those new recommendations need to be considered carefully by Illinois EPA and other stakeholders before any action is taken to revise the applicable criteria. The State is under no obligation to adopt the U.S. EPA recommendations; under the Federal regulations, States can adopt criteria based on the EPA recommendations, or the EPA recommendations “modified to reflect site-specific conditions,” or “other scientifically defensible methods.” 40 CFR 131.11(b). IEPA should consider these options on a state-wide basis; there is no basis for considering these issues first for the CAWS and LDPR, before all other Illinois waters. If, nevertheless, the Board decides that these issues need to be considered at this time for the CAWS and LDPR, then it needs to establish a new subdocket, and begin a new rulemaking process, so all relevant information can be submitted and considered under Board procedures.

Another suggestion on ammonia, made by U.S. EPA, is that if the Board does not adopt the U.S. EPA 2013 ammonia recommendations, it should modify the proposed criteria for Use B waters to ensure protection of early life stages in the winter. We see no scientific basis for this recommendation. The Use B waters do not have seasonal criteria for DO, so we do not understand why they would need seasonal criteria for ammonia. To adopt seasonal ammonia criteria focused on early life stages for the CSSC and other Use B waters would be inconsistent with the basis for setting Use B criteria throughout the course of this rulemaking. That recommendation should not be adopted.

4. COPPER STANDARDS: The Environmental Groups propose that instead of adopting the copper criteria in the Agency's proposal, the Board should consider applying the criteria recommendations issued by U.S. EPA in 2007. Environmental Group Comments at 8. U.S. EPA has made a similar recommendation. U.S. EPA Comments at 6-7. The District believes that use of the new U.S. EPA recommendations is not feasible or appropriate at this time. As the Environmental Groups and U.S. EPA recognize, the U.S. EPA 2007 recommendations utilize a new approach, the Biotic Ligand Model. That approach requires collection and analysis of data for a set of parameters that have not been considered before in setting copper criteria. The District does collect data on some of these parameters in the CAWS, but the District has not done an analysis yet of the extent to which its data would be sufficient to use in calculating copper criteria using the new U.S. EPA approach. We note, in this regard, that while data on dissolved organic carbon (DOC) are needed to apply this new approach, neither the District nor IEPA collects DOC data in the CAWS. See IEPA Comments at 4. Moreover, none of the scientific issues related to the new U.S. EPA recommendations have been the subject of hearings in this rulemaking, and as noted by IEPA, the new approach raises significant implementation issues that need to be considered before proceeding with a rulemaking. IEPA Comments at 4-5. Therefore, the District suggests that any issues related to use of the Biotic Ligand Model to derive copper criteria should be examined on a state-wide basis. If these issues are nevertheless made part of this rulemaking, then they should be dealt with in a separate, new subdocket, so all Board procedures can be followed before any new standards are adopted.

5. SELENIUM: U.S. EPA contends that instead of adopting the selenium criteria proposed by IEPA, the Board should adopt the chronic level currently recommended by U.S. EPA, 5 ug/l. U.S. EPA Comments at 5. However, as recognized by the Environmental Groups, the current U.S. EPA criteria are under review. Environmental Group Comments at 7. In fact, U.S. EPA has issued a new draft criteria document for public comment:

<http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/selenium/index.cfm> .

The new draft Federal criteria recommendations reflect a significantly different scientific approach than the current U.S. EPA criteria. Rather than retaining the current focus on water column levels, the new approach has four elements – two based on water column data and two based on fish tissue data. This change in focus is because, as stated by U.S. EPA, “[a]vailable toxicity data suggest that the most robust and consistent measurement endpoint directly tied to adverse aquatic effects is the selenium concentration in fish eggs and ovaries.” Therefore, the draft U.S. EPA criteria document recommends that States adopt all four elements of the new criteria, “in a manner that explicitly affirms the primacy of the whole-body and/or muscle elements over the water column elements, and the egg-ovary element over any other element.”

<http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/selenium/upload/External-Peer-Review-Draft-Aquatic-Life-Ambient-Water-Quality-Criterion-For-Selenium-Freshwater-2014.pdf> . IEPA should await the results of the Federal guidance development process before adopting new selenium criteria.

6. CYANIDE: The Environmental Groups object to the Board's adoption of the IEPA's proposed site-specific cyanide standard of 10 mg/l. Environmental Group Comments at 8. The basis for this objection appears to be that the Environmental Groups "question" whether IEPA followed current U.S. EPA guidance as to derivation of site-specific standards. The District sees no basis for this "question," in the absence of specific examples of IEPA deviation from the current U.S. EPA guidance. It appears to us that IEPA followed the applicable procedures in deriving the cyanide standard. If there is a specific way in which IEPA has deviated from the applicable guidance, then that needs to be specified in order for other parties to adequately respond.

7. CHLORIDE STANDARDS: The Environmental Groups state that they are "dubious" as to the merits of the chloride standard that has been suggested by Citgo for the Chicago Sanitary & Ship Canal ("CSSC") - which the Board has approved in the First Notice. Environmental Group Comments at 9. U.S. EPA also "continues to question" the Citgo proposal. U.S. EPA Comments at 5-6. The Environmental Groups also state that even if the proposed CSSC standard is adopted, it should not be applied to other waters in the CAWS. Environmental Group Comments at 9. The District disagrees on both of these points. First, the District supports the rationale and methodology set forth by Citgo for the development of chloride standards that consider species that are actually present in the waterbody at issue. Second, the District believes that, as set forth in its comments on the First Notice, it is appropriate to apply that rationale and methodology to other waters in the CAWS besides the CSSC. To the extent that additional hearings are needed on these issues, the Board should consider opening a new subdocket.

Dated: December 12, 2014

Respectfully submitted,

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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